

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

STEPHEN HAHN §
Plaintiff, §
v. § CIVIL ACTION NO. 6:15-cv-00218
UNITED FIRE AND CASUALTY §
COMPANY AND BETTINA BOWLING §
Defendants. §

DEFENDANT'S NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

UNITED FIRE AND CASUALTY COMPANY, (hereinafter "United Fire"), one of the Defendants in the above styled and numbered cause, files this, its Notice of Removal, and would show the Court as follows:

1. UNITED FIRE AND CASUALTY COMPANY and BETTING BOWLING have been sued in a civil action styled Cause No. 276,579-B; *Stephen Hahn v. United Fire and Casualty Company and Betting Bowling*; in the 146th District Court in Bell County, Texas (hereafter referred to as "the state court action"). The state court action was commenced on or about March 27, 2015. On June 9, 2015, United Fire received citation and a copy of the petition, and at that time it was determined that diversity jurisdiction was proper, pursuant to 28 U.S.C. §1332. To date, Betting Bowling has not been served.

2. United Fire files this notice of removal pursuant to the provisions of 28 U.S.C. §1441, *et. seq.*, to remove this action from the District Court of Bell County, Texas to the United States District Court for the Western District of Texas, Waco Division.

3. Plaintiff, in his original petition, allege that Defendant United Fire wrongfully

denied or delayed payment for claims for fire damage to the structure insured by United Fire, thereby breaching the policy of insurance issued by United Fire to Plaintiff. Plaintiffs further allege that United Fire's actions in investigating and delaying or denying Plaintiff's claim for insurance benefits constituted a violation of the common law duty of good faith and fair dealing and fraud and conspiracy to commit fraud.

4. This Court has original jurisdiction over this civil action under the provisions of 28 U.S.C. §1332. Plaintiff, by nature of his citizenship is a citizen of the state of Texas. Defendant United Fire, by nature of its incorporation and of its principal place of business, is a citizen of the state of Iowa. Although Defendant Bowling is a citizen of the state of Texas, Defendant United Fire contends that Defendant Bowling is fraudulently joined in this action because it is clear that there can be no recovery on the causes of action alleged under Texas law from Tabor. *See Parks v. New York Times Co.*, 308 F.2d 474, 478 (5th Cir. 1962), *cert. denied*, 376 U.S. 949 (1964). *See*, Brief In Support of Removal of Action, attached hereto as Exhibit I.

5. Defendant Bowling has been sued under violations of the Texas Insurance Code. Plaintiff has failed to properly plead a claim against Defendant Bowling for misrepresentation because Plaintiff's original petition fails to allege specific actionable conduct. *See Griggs v. State Farm Lloyds*, 181 F3d 694, 699 (5th Cir. 1999). Plaintiff's claims for violations of the Texas Insurance Code fail because they fail to allege any breach of an *individual* duty owed by Defendant Bowling to Plaintiff outside of those occurring within the course and scope of Defendant Bowling's responsibilities to her employer. *See Hornbuckle v. State Farm Lloyds*, 385 F.3d 538, 545 (5th Cir. 2004). Therefore, the joinder of Defendant Bowling does not defeat diversity jurisdiction under 28 U.S.C. § 1332. The amount in controversy is in excess of

\$75,000, exclusive of interest and costs.

6. Venue is proper in Texas because the insured property is located in Killeen, Bell County, Texas, which is the location where the facts giving rise to this suit took place.

7. In accordance with 28 U.S.C. § 1446 (a), the following are attached hereto:

- Exhibit II: Index of Matters Being Filed;
- Exhibit III: A copy of the Citation as to United Fire and Casualty Company;
- Exhibit IV: Plaintiff's Original Petition;
- Exhibit V: Defendant United Fire and Casualty Company's Original Answer;
- Exhibit VI: The state court's Docket Sheet;
- Exhibit VII: List of all Parties and Counsel of record;
- Exhibit VIII: Defendant's Consent to Removal of Case to Federal Court.

8. The citation and petition in this action were served on United Fire on June 9, 2015 by serving its registered agent: Joe Johnson, 2115 Winnie Street, Galveston, Texas 77550. This notice of removal is filed within 30 days of receipt of the petition and is timely filed under 28 U.S.C. § 1446(b). Furthermore, this notice of removal is being filed within one year of the date this action commenced.

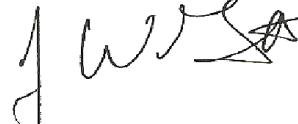
9. In accordance with 28 U.S.C. §1446(d), written notice of the filing of this notice of removal will be promptly served upon all adverse parties, and a copy of this notice of removal promptly will be filed with the Clerk of the District Court of Bell County, Texas.

10. Only Defendant United Fire and Casualty Company has been joined in this matter. It consents to this removal as evidenced by the attached Consent.

Defendant United Fire and Casualty Company respectfully requests that this action be removed to this Court and that this Court accept jurisdiction of this action and place this action on the docket of this Court for further proceedings as though the action originally had been instituted in this Court.

Respectfully submitted,

GAUNTT, EARL & BINNEY, L.L.P.



By: _____

J. Chad Gaunt

State Bar No. 07765990

1400 Woodloch Forest Drive, Suite 575

The Woodlands, Texas 77380

Telephone: 281-367-6555

Facsimile: 281-367-3705

Email: chad.gauntt@geblawyers.com

Counsel for Defendant,

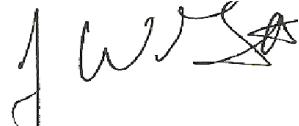
United Fire and Casualty Company

CERTIFICATE OF SERVICE

This pleading was served in compliance with Rule 5 Federal Rules of Civil Procedure on July 1, 2015, via facsimile, first class regular mail, certified mail, return receipt requested and electronically served.

Clare L. Pace (SBN: 24079097)
Gerald T. Drought (SBN: 06134800)
Martin & Drought, PC
Bank of America Plaza, 25th Floor
300 Convent Street
San Antonio, TX 78205
Telephone: 210-227-7591
Facsimile: 210-227-7924
Email: cpace@mdtlaw.com

Counsel for Plaintiff



J. Chad Gauntt